IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF MAY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

-

WRIT PETITION NO : 14833 of 2004

Between:

K.Valli Kumari,
R/o D.No.13/4, T.S.No.3-14, West Mada Street,

Tirumala Post, Chittoor District

..... PETITIONER

AND

1 The Special Deputy Collector, (Land Acquisition), T.T.D., Tirupathi, Chittoor District
2 Government of Andhra Pradesh, represented by its Principal Secretary,

Revenue (Endts-III) Department,
Secretariat Buildings, Secretariat, Hyderabad.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction more particularly one in the nature of a Writ of Mandamus declaring the declaration issued by 2nd respondent under Section 6 of Land Acquisition Act, 1894 vide Government Memo No. 10597/Endts-III (1) 2004-dated 01-07-2004 and published in the Indian Express, Hyderabad on 31st July 2004 in respect of premises bearing D.No.13/4, and in T.S.No.3/14 and 3/15, Ward No.4, Block-B, West Mada Street, Tirumala as illegal, *mala fide* and void and consequently restrain the respondents from taking any action pursuant thereto including dispossession of the petitioner from the above premises.

Counsel for the Petitioner: MR.C.V.BHASKAR REDDY

Counsel for the Respondents: Advocate General &

G.P. for Land Acquisition

The Court made the following

THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

W.P.No.14833 of 2004

ORDER:

Petitioner, whose property also is notified for acquisition, along with the properties of others, for implementation of the Master Plan at Tirumala, filed this petition questioning the declaration under Section 6 of the Land Acquisition Act, 1894 (the Act).

2. The admitted facts are, petitioner is the owner of the property bearing No.3/4, in T.S.No.3/14 and 3/15, Ward No.4, Block-B, West Mada Street, Tirumala, whereat she is running a Lodge. Notification dated 17.04.2003 proposing to acquire the aforesaid property of the petitioner and other properties, for implementation of the master plan, under Section 4(1) of the Act, was published in news papers on 20.05.2003. During enquiry under Section 5A of the Act, petitioner and others submitted their objections on 04-07-2003. Overruling the objections, declaration under Section 6 of the Act was published. Questioning the acquisition and declaration under Section 6 of the Act, petitioner filed W.P.No.1337 of 2004 in this Court on the ground that she was not given an opportunity of being heard. That petition and another W.P.No.1155 of 2004, filed by other owners of some other properties sought to be acquired, were partly allowed on
29-01-2004 by a common order, setting aside the notification dated 16-11-2003 issued under Section 6 of the Act, with a direction to the petitioner and the petitioners in W.P.No.1155 of 2004 to appear before the first respondent on 09-02-

2004 and file their objections and adduce their evidence in support of the objections, if any, on that date itself, and directed the first respondent to submit his report to the Government without adjourning the case. As per those directions, petitioner appeared before the first respondent and gave evidence. First respondent sent his report along with the record to the Government through the Collector and the Government overruling the objections of the petitioner approved the declaration under Section 6 of the Act that the above property of the petitioner along with the properties of others mentioned therein are required for acquisition, for the public purpose of implementing the Master Plan, West Mada Street and for providing better amenities to visiting pilgrims at Tirumala, etc.

3 . The main contention of Sri Pratap Reddy, learned Senior Counsel for the petitioner, is that since the notification under Section 4(1) of the Act shows that properties mentioned therein are proposed to be acquired for implementation of Master Plan, and since the notification under Section 6 of the Act, impugned in this petition states that the acquisition is for West Mada Street, implementation of Master Plan, etc., and since in the earlier notice issued to the petitioner under Section 5-A of the Act it is stated that the purpose of acquisition of the petitioner's property is for Maha Prakaram and widening of T.K.Street, which is far away from the property of the petitioner, and since construction of Maha Prakaram is doubtful, in view of the pendency of the public interest litigation writ petitions before a Division Bench of this Court, it is easy to see that the proceedings to acquire the property of the petitioner are not bona fide and that petitioner is targeted to be thrown out of that place, as the property immediately next to the property of the petitioner, in the same street, belonging to Karnataka government is not touched for the alleged road widening of the West Mada Street. It is his contention that since first respondent was placed in-charge of the office of the Estate Officer of Tirumala Tirupathi Devasthanams (T.T.D.), who also looks after the land acquisition for T.T.D., the beneficiary, his report to the Government is but a biased report, and so the notification issued on such biased report is liable to be quashed.

4. The contention of the learned Advocate General, appearing on behalf of the respondents, is that the property of the petitioner is required for implementation of the Master Plan, as per which all the four Mada streets are to be widened and

galleries are to be constructed on both sides of all the four Mada Streets, to facilitate the pilgrims watch the procession of the deities at the time of Utsavams especially 'Brahmotsavam'. It is his contention that the road widening of the West Mada Street could not be taken up since the petitioner failed to deliver possession of the property and the properties of all others in the West Mada Street, which were notified for acquisition are taken possession of after the proceedings initiated by them in this Court and appeals before the apex Court were disposed of. Referring to the Master Plan which shows the proposed four wide Mada Streets around the temple, with extensions beyond the road junctions, he explained that the extended roads are to facilitate the chariot (car) to take a turn at the road junctions, because the persons who pull the chariot will have to go beyond the road junction before the chariot takes a turn at the junction. He contends that the property of the petitioner falls almost in the middle of the proposed extended West Mada Street and contends that Karnataka Government, which has property adjacent to the property of the petitioner, gave consent for taking over that property, and so, the contention that property of the petitioner alone is targeted is not true. It is his contention that the fact that first respondent was placed in-charge of the post of Estate Officer of T.T.D. is not of any consequence because by the time he was placed in-charge of the post of the Estate Officer, T.T.D., enquiry under Section 5A of the Act was completed.

5. In reply, the contention of the learned senior counsel for the petitioner is that since first respondent admittedly assumed charge of the post of Estate Officer, T.T.D., on 26-02-2004 and sent the report on 14-03-2004, it is clear that by the date he sent a report to the Government, he was acting as the Estate Officer, T.T.D. also, and so the enquiry report prepared by him, after he assumed charge of the post of Estate Officer, T.T.D., would definitely be a biased report.

6. Before taking up the merits of the contentions raised on both sides it is necessary to state that after publication of the notification under Section 4(1) of the Act, in response to the notice under Section 5A of the Act petitioner filed her objections on 04.07.2003 before the first respondent expressing no objection for acquisition of her property in case an alternate site, on lease basis for 33 years with renewal clause, is provided, and after her objections were overruled and the substance of declaration

under Section 6 of the Act dated 06.11.2003 was published in news paper on 16.11.2003 petitioner filed W.P.No.1337 of 2004 questioning the declaration under Section 6 of the Act, which, as stated earlier, was allowed in part. So, prima facie it is clear that the fact that the proposed acquisition is for a public purpose is not seriously disputed by the petitioner. She did not allege any lack of bona fides, or mala fides, in the proposed acquisition of her property in the objections filed by her on 04-07-2003. That apart the allegations in the counter affidavit of the first respondent that a Division Bench of this Court in W.A.No.1342 of 1989 and batch, while dealing with the acquisition of land at Tirumala for implementation of Master Plan, held that object of widening the streets and the planned development of the entire area as a whole as per the Master Plan, is a public purpose, and that that order was affirmed by the apex Court, is not disputed or denied by the petitioner by filing a reply affidavit. So, it is clear that implementation of Master Plan at Tirumala is for a public purpose, and so, prima facie, it is clear that the proposed acquisition of the property of the petitioner is for a public purpose.

7. I would like to take up the second contention of bias, raised by the learned senior counsel for the petitioner, in the first instance. First respondent, admittedly, was put in additional charge of the post of Estate Officer, T.T.D., and assumed charge of that post on 26-02-2004. He sent the report to Government, through the Collector, on 14-03-2004. I am not able to agree with the contention that since first respondent was kept in-charge of the post of Estate Officer of T.T.D. (the beneficiary), who looks after the land acquisition for the benefit of T.T.D., his report is a biased report, because the scope of enquiry is very limited, as the apex Court in **DELHI ADMINISTRATION V. GURDIP SINGH UBAN** held at para-53.

> "Now objections under Section 5-A, if filed, can relate to the contention that (i) the purpose for which land is being acquired is not a public purpose, (ii) that even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public purpose could be served by other land already proposed or some other land to which the objector may refer, or (iii) that in any event, even if this land is necessary for the public purpose, the special fact-situation in which the objector is placed, it is a fit case for omitting his land from the acquisition."

As stated earlier, the fact that the acquisition is for a public purpose cannot be disputed or doubted. That takes care of the first objection that can be raised under

Section 5-A of the Act. The other two objections relate to the property and person. The fact that the properties of several persons, including that of the petitioner, are notified for acquisition under Section 4(1) of the Act shows that neither the petitioner nor her property is targeted. At page 15 of the counter affidavit filed by the first respondent, he clearly stated that all private properties including Mutts and Choultries were already acquired, except the property of the petitioner, and that the development activities in the West Mada Street came to a stand still because of the objection of the petitioner. When the property of the petitioner, notified for acquisition, hinders the widening of the West Mada Street, question of acquiring some other property instead of the property of the petitioner, does not serve the purpose of forming a straight West Mada Street to facilitate procession of deities during festivals, and for providing better amenities to pilgrims to watch the festivals and festivities that take place on the four Mada Streets during Brahmotsavam and other occasions.

8. That apart, first respondent is not the decision making authority. He only submits a report and it is the Government that has to take the ultimate decision, because Section 5-A of the Act, as applicable to the State of Andhra Pradesh, reads:

> "**Section 5-A. Hearing of objections**:-- (1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, [within thirty days of causing public notice under the said sub-section], object to the acquisition of the land or of any land in the locality as the case may be.
>
> (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.
>
> (3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

9. In **CHANDAN SINGH V. STATE** a Division Bench of Allahabad High Court while considering the scope of Section 5A of the Act, held (in para-5):

> "It may be noticed that the Collector hearing the objections has no authority to reject or accept the objections. The law enjoins upon the Collector to hear the objectors and hold enquiry and thereafter to submit a report to the appropriate Government making his recommendations on the objections. The appropriate Government is empowered to take a decision on the objections and its decision is final under the law. Section 5-A does not require the Collector to pass any positive order accepting or rejecting the objection."

In **ABDUL HUSSAIN TAYABALI Vs. STATE OF GUJARAT** the apex Court held as follows in para-16:

> "Under S. 5-A. the Collector has to hear the objections, of the owner, take them on record and then submit his report to the Government. The S. also requires him to send along with his report the entire record of his inquiry which would include the objections. The report has merely recommendatory value and is not binding on the Government. The record has to accompany the report as it is for the Government to form independently its satisfaction. Both are sent to enable the Government to form it satisfaction that the acquisition is necessary for a public purpose or for the Company." (underlining mine)

So, it is clear that the report of the first respondent has only a recommendatory value, and is not binding on the Government because it can, based on the record sent to it along with his report, either accept or reject his proposal. In fact, in **GURUDIP SINGH UBAN** case (1 supra) the apex Court in para-51 held as follows:

> "It is sufficient if the authority which conducts the Section 5-A inquiry has considered the objections raised in relation to any particular land. Even where the said authority accepts the objections, that is not binding on the Government which can take a different view for good reasons. Where the Government agrees with the report under Section 5-A, the declaration under Section 6 need not advert to the reasons or facts concerning each piece of land." (underlining mine)

Therefore, the fact that first respondent was placed in-charge of the post of Estate Officer of the T.T.D. also, cannot be a ground for quashing the declaration under Section 6 of the Act because the decision taking authority is the government but not the first respondent.

10. Now, with regard to the other contentions raised by the learned senior counsel for the petitioner, it is no doubt true that the notices sent might have stated that the proposed acquisition of the property of the petitioner is for Maha Prakaram, and construction of Maha Prakaram is doubtful in view of the pendency of the Public Interest Litigation writ petitions. But that fact per se is not and cannot be a ground for setting aside the declaration under Section 6 of the Act as **GURUDIP SINGH UBAN**

case
(1 supra) is an answer to all the contentions raised by the learned senior counsel for the petitioner on the aspects relating to purpose of acquisition because it is clearly held therein that if the government agrees with the report under Section 5A of the Act, the declaration under Section 6 of the Act need not advert to the reasons and the facts concerning each piece of land.

11. Judicial notice can be taken of the fact that during Brahmotsavam of the Lord Sri Venkateswara at Tirumala, there would be procession of the deities, including chariot procession where a huge chariot with two long stout ropes of a length of more than 50 feet would be pulled by hundreds, if not thousands, of devotees. Several thousand of pilgrims throng Tirumala to watch the Brahmotsavam festivities. To avoid congestion and to provide better view to the pilgrims, it is stated that galleries would be constructed on both sides of West Mada Street and the other three Mada Streets also, which as stated earlier, is public purpose. The property of the petitioner, which is said to be an obstruction for the expansion of West Mada Street, is therefore sought to be acquired.

12. Petitioner's contention that she is targeted that her property is not really necessary for implementation of Master Plan and that the intention is to throw her away from the building proposed to be acquired, is but an after thought, because, as stated earlier in para-6 supra, she did not raise such a contention in her objections dated 04-07-2003. In fact, in **FIRST LAND ACQUISITION COLLECTOR V. NIRODHI PRAKASH GANGOLI** the apex Court held:

> "when the Court is called upon to examine the question as to whether the acquisition is *mala fide* or not, what is necessary to be inquired into and found out is, whether the purpose for which the acquisition is going to be made, is a real purpose or a camouflage. By no stretch of imagination, exercise of power for acquisition can be held to be mala fide, so long as, the purpose of acquisition continues."

13. The delay in implementation of the Master Plan, as seen from the counter affidavit, is pendency of proceedings in Courts and orders of stay granted by the Court. It is stated in the counter affidavit of 1st respondent that except this petition of

the petitioner, there is no other impediment for widening of the West Mada Street. Since acquisition of the property of the petitioner appears to be essential and is for a public purpose, I find no merits in the writ petition.

14. Therefore, the writ petition is dismissed with costs. Advocate fee is fixed at Rs.1000/- (rupees one thousand only).

C.Y. SOMAYAJULU, J

Date: 05-05-2005

lsn/cvrk

ASSISTANT REGISTRAR

To

1. One Fair Copy to the Hon'ble Sri Justice C.Y. Somayajulu

(for his lordships kind perusal)

2 The Special Deputy Collector, (Land Acquisition), T.T.D., Tirupathi, Chittoor District

3 The Principal Secretary, Government of Andhra Pradesh,

Revenue (Endts-III) Department,
Secretariat Buildings, Secretariat, Hyderabad.

4 Two CCs to Advocate General & G.P. for Land Acquisition, High Court

Buildings, Hyderabad (OUT).

5 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affiars, New Delhi.

6 The Secretary, A.P. Advocates Association Library, High Court Buildings, hyderabad.

7 Two CD copies.